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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/677,029	10/01/2003	Douglas L. Goedecken	P6187US	9524
7590 12/07/2007 KAGAN BINDER, PLLC Maple Island Building, Suite 200 221 Main Street North Stillwater, MN 55082				
			EXAMINER TRAN LIEN, THUY	
			ART UNIT 1794	PAPER NUMBER
			MAIL DATE 12/07/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

Application No.

10/677,029

Applicant(s)

GOEDEKEN ET AL.

Examiner

Lien T. Tran

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 24 September 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-12 and 18-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12, 18-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

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Claims 1-3, 5-12, 18-19, 21,22 are rejected under 35 U.S.C. 102(b) as being anticipated by Freyn et al.

Freyn et al disclose an unproofed frozen dough comprising an acidic active agent, a basic active agent and yeast in amount of 2-20% . The dough products include dinner rolls, bread stricks, cinnamon rolls. The acidic active agent can be selected from the ingredients listed on column 2 lines 50-60. The frozen dough does not need to be thawed or proofed prior to baking; however, the dough may be thawed and proofed without detracting from the quality of a baked product. The method comprises the step of determining amount of ingredients to form the dough. ( see col. 2 and col. 5)

The reference discloses all the limitations claimed. The properties of being thawed and proof in a retarder and the raw specific volume are inherent in the Freyn et al dough because it is the same dough containing the same ingredients as claimed.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 4, 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Freyn et al.

Freyn et al do not disclose encapsulated basic active .

Encapsulated leavening agent is well known in the art as exemplified in the Moder et al reference submitted by applicant. It would have been obvious to one skilled in the art to use encapsulated basic agent when desiring to prevent the action between the leavening acid and leavening base until baking time.

In the response filed 9/24/07, applicant argues the Freyn et al dough would not proof at retarder condition. This argument is not supported by factual evidence. The office action has established inherent properties because the Freyn et al dough comprises the same ingredients in the same amount as claimed. Thus, if applicant contends that the properties are not inherent, the burden of proof is shifted to applicant to show that they are not inherent. Applicant argues that the examples in Freyn et al show that the flour to water ratio is too low for the dough to sufficiently retain gas while leavening at retarder. This argument is not supported by factual evidence and it is not commensurate in scope with the claims because the claims do not recite any limitation on flour to water ratio. Furthermore, Freyn et al disclose on column 3 lines 65-67 that typically from 40-75% water is employed; thus, the amounts of water in the examples are just exemplified embodiments. For instance, example 2 shows 67.92% water but example 7 shows 47.78% water. Applicant has not shown any correlation between the ratio of flour to water and the capability of being proofed at retarder temperature. Furthermore, the examples disclosed in the specification have water content falling

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within the range disclosed in Freyn et al. With respect to claims 1, 12 and new 21, the proofing at retarder conditions is not a positive limitation with respect to the dough and the method. Claims 1 and 21 recite an unproofed frozen dough comprising yeast, acidic active agent and basic active agent and this is what Freyn et al disclose. Claim 12 recites the step of determining amounts of ingredients to result in a composition and Freyn et al disclose such step.

With respect to the 103 rejection, applicant makes the same argument with respect to being proofed at retarder temperature. It is already set forth above that the Freyn et al dough has the capability of being proofed at retarder conditions and applicant has not shown any evidence to the contrary. Applicant argues there is no reason to modify either the Freyn or the Moder et al reference alone or in combination to formulate a dough that can proof at retarder conditions. The Moder et al is not even used in the rejection; it is commented upon to show that the use of encapsulated leavening agent is well known in the art and applicant does not argue why its use would not have been obvious. Applicant argues that dough with encapsulated leavening agent proofs at retarder conditions. Applicant has not shown that only dough with encapsulated leavening agent proofs at retarder conditions. It is not necessary to show adding an ingredient for the same purpose as claimed product. Furthermore, it is inherent that the Freyn et al dough has the capability of being proofed at retarder conditions and applicant has not shown any evidence to the contrary.

Applicant's arguments filed 9/24/07 have been fully considered but they are not persuasive.

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**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T. Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

*Lien Tran*  
LIEN TRAN  
PRIMARY EXAMINER  
*Group 1700*

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

November 28, 2007